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1 seriously affected by that.

2 Q. Sure. Would you say that they were mined
3 20 years ago? 30 years ago?

4 A. No. It was more than ten years ago with this
5 piece. I've been doing it for about ten years now, I
6 guess, so...

7 Q. And do you have any baseline to --

8 A. For the part that's in red? No.

9 Q. Yes.

10 A. Well, the other stuff I farmed a little bit
11 longer, but not -- not way longer, I guess. I'm not
12 sure how many years but...

13 Q. Sure. How about the other properties that you
14 were just describing that weren't within these
15 photographs --

16 A. Very similar. For instance, Helmuth Pfennig
17 owns a quarter of land up there, or he has, that I farm
18 for him. Well, he's passed away but now his daughter.
19 And I farm the whole quarter. Well, it was mined
20 through and there was a haul road and whatever, and
21 eventually it's all been returned to production. But
22 the production there is -- is substandard at best. I
23 mean, it's just what it is. I don't know where the
24 numbers come from, but I know from my experience, what I
25 see when I, you know, run these fields and it's just --

1 it's a problem.

2 So for the -- for the good of everyone, I don't
3 think we should talk about -- this is an elephant in the
4 room, as far as I'm concerned. It's important that we
5 address this and fix it. Everyone should get serious
6 about that, because it's what it is.

7 Q. Sure. I guess what -- in reference to those
8 other properties as well, though, do you have a baseline
9 to show that they were subpar relevant to -- in
10 reference to how they were -- how productive they were
11 before?

12 A. The one that -- the whole quarter that I'm
13 farming for them now, I used to farm part of that
14 separately, you know, way in the beginning when I first
15 farmed for Helmuth, which would have been back in 1999
16 or 2000 maybe, and so that was very good cropland at the
17 time. And now, well, you know -- but it's all bended
18 up, because you got a little parcel and then they're
19 part -- you know, they farm part -- or they mine part of
20 it and then there was a haul road and then they mined
21 another part. And so when you get it all back, it isn't
22 all the same anymore, of course, but...

23 Q. Sure. Do you know if they were all pre- or
24 post-mine reclamation act --

25 A. Well, it's the same project for everyone. I

1 mean, I know how they're doing it but I'm not -- you
2 know, as far as get into the nuts and bolts of what
3 you're talking about here, I'd -- it's irrelevant to me.
4 Because what's important is, in the end, it doesn't
5 produce what it should be doing.

6 Q. Sure. But I guess it's relevant to the extent
7 that what standards the reclamation was -- what the
8 company's beholden to.

9 A. Well, it's Coteau Properties. It's North
10 American Coal standards. I don't know. Whatever
11 they're doing there is probably very similar to what's
12 happening south of -- south of Beulah as well.

13 Q. Okay.

14 MR. SCHUH: I don't have any other questions,
15 Your Honor. Thank you.

16 ALJ HOGAN: Commissioner Christmann?

17 CHAIRMAN CHRISTMANN: So Mr. Voigt said that
18 this was pre-bond release, but these maps go from 15 to
19 20. Do you know whether this land's bond released yet?

20 THE WITNESS: I guess I'm -- I'm not sure.
21 Helmuth has it but --

22 CHAIRMAN CHRISTMANN: Are you still farming it?

23 THE WITNESS: -- I'm paying rent for it. Yeah,
24 uh-huh.

25 CHAIRMAN CHRISTMANN: And so when I look at this

1 from 15 to 20, in 18, you know, just very generally, the
2 red is bad and green is good.

3 THE WITNESS: Right.

4 CHAIRMAN CHRISTMANN: In 18 it was a lot better.
5 Is there something about peas or was there something
6 about the weather year, or why did that one look better?
7 Do you know?

8 THE WITNESS: You know, I asked myself that too.
9 I'm not sure, Randy. I really don't. Generally, that
10 was -- you know, a 34-bushel yield for peas is not grand
11 but it's not terrible either, I guess, based on, you
12 know, whatever the year was like. I don't know. That
13 was --

14 CHAIRMAN CHRISTMANN: So you don't have any
15 theory about --

16 THE WITNESS: I don't have any explanation for
17 why that was better that particular year. No.

18 CHAIRMAN CHRISTMANN: Okay. But there's no
19 difference in what -- you know, land that has been under
20 any pressures associated with mining, that peas wouldn't
21 be impacted by that as much as the other types of crops,
22 that you're aware of?

23 THE WITNESS: Well, one -- another year that I
24 had, which you don't have a map of, but I had peas on a
25 field of Helmuth's and also undisturbed land a half a

1 mile away. And the peas on the mine land -- this was
2 the first year we got it back -- they made 6 bushels an
3 acre and the other field made 55. So there's -- there's
4 a big difference there. I mean --

5 CHAIRMAN CHRISTMANN: Must have been more the
6 year than --

7 THE WITNESS: Yeah, it might have been, but it's
8 also timing and stuff. If you have a problem getting on
9 the land because it's too wet -- like this year, for
10 instance, that quarter had water standing. We had to
11 leave it and come back and plant it afterwards. And we
12 finished all of our other fields and came back and did
13 it. Because we weren't able to actually, you know,
14 physically get on it because infiltration is pretty slow
15 on that stuff. And then if it rains hard, well, then
16 now you have water ponding again so...

17 CHAIRMAN CHRISTMANN: And then my -- I think my
18 last question, there's no maps here for '21, '22, or
19 '23.

20 THE WITNESS: I can get them for you. I have
21 them.

22 CHAIRMAN CHRISTMANN: Are you still farming it?

23 THE WITNESS: Yes.

24 CHAIRMAN CHRISTMANN: Does it look the same?

25 THE WITNESS: Very much so, yeah.

1 CHAIRMAN CHRISTMANN: That's fine. Thank you.

2 ALJ HOGAN: Commissioner Haugen-Hoffart?

3 COMMISSIONER HAUGEN-HOFFART: No questions, but
4 thank you.

5 ALJ HOGAN: Commissioner Fedorchak.

6 COMMISSIONER FEDORCHAK: So that field, there's
7 -- let's see, I moved the page -- oh, here it is.

8 There's nothing -- there's no difference in the
9 characteristics of that particular field in the south
10 part versus the north part?

11 THE WITNESS: Geologic -- or you mean --

12 COMMISSIONER FEDORCHAK: It's uniform?

13 THE WITNESS: By the lay of the land? Yeah.

14 COMMISSIONER FEDORCHAK: Yeah.

15 THE WITNESS: It's pretty much the same, yeah.
16 There's a slight rise in the middle of that field, but
17 the rest of it, it's all level, you know, relatively
18 nice land for that part.

19 COMMISSIONER FEDORCHAK: And the soil is the
20 same --

21 THE WITNESS: Whatever was there is still there,
22 yeah.

23 COMMISSIONER FEDORCHAK: Yeah. And do you know
24 how many years left of bond -- like you know nothing
25 about how much bond is --

1 THE WITNESS: Yeah. I don't know. It's not my
2 area.

3 COMMISSIONER FEDORCHAK: Yeah.

4 THE WITNESS: I just farm it.

5 COMMISSIONER FEDORCHAK: Okay. All right.
6 That's it for me. Thank you.

7 ALJ HOGAN: Any redirect, Mr. Braaten?

8 MR. BRAATEN: No, Your Honor.

9 ALJ HOGAN: Well, thank you, Mr. --

10 THE WITNESS: Weinand.

11 ALJ HOGAN: -- Weinand. I had -- my mind just
12 blanked there for some reason.

13 All right. Other witnesses, Mr. Braaten?

14 MR. BRAATEN: I don't have any more witnesses,
15 Your Honor.

16 ALJ HOGAN: All right. Mr. Mann.

17 MR. MANN: Yeah. I'll call Donn Steffen.

18 ALJ HOGAN: All right.

19 Good afternoon, Mr. Steffen. I'll have you
20 start by stating your full name and spelling your last
21 name for the record.

22 MR. STEFFEN: Donn Steffen, S-T-E-F-F-E-N.

23 ALJ HOGAN: And, Mr. Steffen, were you in the
24 room this morning when I went through the penalties for
25 perjury?

1 MR. STEFFEN: Yes.

2 ALJ HOGAN: And do you understand what perjury
3 is?

4 MR. STEFFEN: Yes.

5 ALJ HOGAN: And being advised of the potential
6 penalties for perjury, do you promise to tell the truth
7 in this case today?

8 MR. STEFFEN: Yes.

9 ALJ HOGAN: All right. Thank you.

10 Go ahead, Mr. Mann.

11 DONN STEFFEN,

12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. MANN:

16 Q. Donn, could I have you state your name for the
17 record and give us your business address?

18 A. Donn Steffen. 6502 17th Street Southwest, Zap,
19 North Dakota 58580.

20 Q. And who do you work for, Donn?

21 A. Coyote Creek Mining Company.

22 Q. What's your position with the mine?

23 A. Operations manager.

24 Q. Can you give us your educational background?

25 A. I have a degree in civil engineering from the

1 University of North Dakota, and I'm a registered
2 engineer in the state of North Dakota.

3 Q. What are your primary duties at the mine?

4 A. Manage all operations of the mine including the
5 production and maintenance department.

6 Q. Do you have any experience with other mines in
7 Mercer County?

8 A. Yeah. Prior to coming to Coyote Creek Mine, I
9 worked at the Coteau Properties Freedom Mine and
10 Bellaire Corporation's Indian Head Mine. I started my
11 career in this mining industry in 1990.

12 Q. Approximately how many years have you worked
13 with regrade approval requests in North Dakota?

14 A. Most of my 33 years I have.

15 Q. Do you have an estimate, like approximately how
16 many regrade approval requests you've completed yourself
17 or assisted on?

18 A. Between 100 and 150.

19 Q. Okay. Now, it seems there's been a little bit
20 of confusion so what I'd like you to do initially is
21 kind of explain the difference between the projected
22 SPGM distribution thickness and the actual SPGM
23 redistribution thickness, which there appears to be some
24 confusion about.

25 And if we could pull up CCMC Exhibit number 100,

1 it might be helpful to start with that. Can you tell us
2 what that is, Donn? Is this a document that you
3 prepared, Donn?

4 A. Yes, it is.

5 Q. Can you take us through kind of the purpose of
6 it and, you know, what you're showing on here?

7 A. Yes, I prepared this document. I thought
8 there's a lot of confusion out there on terms and
9 things, so I put this together with keywords and phrases
10 related to our redistribution.

11 On the left side it talked about keywords
12 related to projected SPGM redistribution thickness. On
13 the right side, more on the actual SPGM redistribution
14 thickness. And I kind of go through those terms. And
15 when Julie had a lot of questions, confusion here, just
16 want to go through those.

17 Projected, when you talk projected, we always
18 talk about pre-mine. You talk the actual, talk about
19 the post-mine phase.

20 Talk about projected, on the left side again,
21 we're talking overburden and only that word. Talk about
22 actual, we talk about spoil.

23 On the left side again, projected, submitted in
24 our permit. Your actual SPGM thicknesses are submitted
25 in our grade approval packages.

1 The projected again is calculated once, the life
2 of the mine. The actual is frequently calculated.
3 Every time we do a grade approval request, we got to run
4 that calculation.

5 Projected again is only used for development in
6 the Annual Soils Handling Plan. The actual is used for
7 all the grade approvals.

8 Projected for -- I know it's only really
9 mentioned in Policy 17. I don't see any reference in a
10 regulation, especially Chapter 15, Paragraph 4,
11 redistribution. I see no mention of the projected in
12 there.

13 And then we get into dragline overburden is --
14 on the projected. Excuse me here. On the actual side,
15 we call it dragline spoil. But when you talk projected,
16 it's overburden.

17 And then same with the pre-bench. Same thing.
18 It's pre-bench overburden on the projected. Pre-bench
19 spoil on the actual side in the post-mine era. Okay?

20 Q. Okay. And I think that's a helpful start, Donn,
21 but like sometimes it's nice to be able to visualize it.
22 Have you also prepared an exhibit? I think it's
23 Exhibit 101. It's like a cross-section that you can use
24 -- a generic cross-section --

25 A. Okay.

1 Q. -- to kind of walk through how the process
2 works.

3 A. Yeah. Can I pan down -- go back to that
4 previous one? There's a few more things at the bottom
5 of that slide I want to --

6 Q. Oh, my apologies.

7 A. Yeah, I just -- for Julie's sake, I know there's
8 some questions here.

9 What SPGM redistribution thickness is, it's
10 abbreviated SPGM at times, just so you know. Excuse me.
11 It's actually -- that's the second one there. SPGM
12 redistribution thickness. Sometimes we call it SPGM
13 respread depth. They're universal. I might call it one
14 way, but they are universal, that wording. Okay? And
15 the last one, the topsoil and the subsoil make up the
16 SPGM.

17 Okay. I can go to that exhibit.

18 Q. Yeah, let's -- and if we can move on to 101 now.

19 A. Okay. On the right side, what I'm going to call
20 the pre-mine phase. This is just a typical
21 cross-section through our mine. This isn't actually an
22 exact spot but a typical cross-section where we have a
23 dragline and pre-bench fleet working.

24 On the right side, if you get over here, you see
25 your topsoil and subsoils have not been disturbed. You

1 see the pre-bench below it. Typically, in this
2 cross-section, it could be 30 feet on this one. We see
3 the dragline overburden, which we dedicate 85 feet for
4 the dragline. We show that as the scale there.

5 Another thing is, you see over here, there's
6 been a lot of talk about the overburden sampling, where
7 we take that at. Monty went into detail on that one per
8 40 acres. It just shows where that sampling's
9 conducted. And it's all the way done from the surface
10 all the way to the top of the coal.

11 Then we go through, as we work our way to the
12 left, that's our active area, our open pit area where
13 the dragline would be spoiling into this next area, but
14 here's our dragline spoil, the (indiscernible)
15 generates.

16 On top of that, when we're doing the pre-bench
17 work that we're moving -- from over here, we'd call it
18 pre-bench overburden. When we move it over here, it
19 becomes our pre-bench spoil. Placed on top of the spoil
20 that the dragline placed.

21 That's -- when we get this to grade, to the
22 approved post-mining topo, that's the surface that we
23 topo and submit in our regrade approval packages. And
24 then when we do respread that topsoil, so I call it the
25 redistributed topsoil and redistributed subsoil.

1 And the testing that we do over here, you know,
2 at 12 inches down, it's at this surface right here.
3 That's all our testing. The actual surface that we're
4 placing the subsoil on. We do not use any of this data
5 from the pre-mine. When we do this, I will get into a
6 lot more depth later on the grade approvals, sure, but
7 that's what we do it at.

8 And while I'm at it here, there's one more thing
9 I want to bring up. I guess we can bring up the
10 exhibit, the picture that Casey showed earlier, that
11 Exhibit 50.

12 Q. You want to pull that up?

13 A. Please. Go to the next picture of that.

14 Okay. There was this picture here that showed
15 about pre-bench. And I think Mr. Voigt mentioned that
16 the -- that this is dragline spoil over here and that we
17 were capping with 12 inches. I mean, that was the
18 discussion. That discussion did not happen. We did not
19 mention anything about 12 inches.

20 His reference to that we're placing this on top
21 of dragline spoil is incorrect.

22 Can you go back to that cross-section?

23 The place we took this picture, we had 40 feet
24 of pre-bench spoil placed there at the time of that
25 picture. 40 feet was placed there. That was not

1 dragline spoil. We had over 40 feet pre-bench spoil
2 placed at that location. So it was not dragline spoil.
3 And we typically place that pre-bench spoil in 6- to
4 8-foot lifts.

5 Q. Okay. So let's -- and I know the complaint,
6 it's addressing the grade approvals which are the actual
7 respread distribution depths, but, again, with the
8 confusion, can you first kind of walk us through, you
9 know, how it works with the -- initially with the
10 projected SPGM redistribution?

11 A. Okay. There's a lot of confusion there so I'm
12 going to go through the projected first. Because there
13 is a lot of difference there between that and the actual
14 -- the projected SPGM respread is done during the
15 permitting phase of the mine. This projected thickness
16 is based on the quality of the overburden prior to
17 mining.

18 The bore holes are drilled and sampled at a
19 spacing, about 1,320 feet, or one sample per 40 acres,
20 just like Monty described, and he did a good job of
21 detailing that. Poly 17, Poly C 17, has guidelines to
22 assist us in calculating this projected thickness.

23 Section 2.4.5 of our permit includes the methods
24 we use to calculate projected thickness that we report
25 on the projected SPGM respread depth map in section

1 2.5.7 in our permit.

2 The projected SPGM respread thickness is only
3 used in the development of our Annual Soils Handling
4 Plan. This projected respread thickness information is
5 not used by the mine for any actual SPGM redistribution.

6 Now, the actual SPGM redistribution thickness,
7 the actual SPGM thickness calculation is done during the
8 post-mine stage when we submit our grade approval
9 request. The actual thickness is based on the quality
10 of the graded spoil in accordance with the table and
11 North Dakota -- North Dakota Administrative Code
12 69-5.2-15-04, 4(a)(2).

13 Q. Okay. Let's move on then to, I believe it's
14 CCMC Exhibit 102. It should be the overview map. Can
15 you just kind of walk us through that map and identify
16 the six tracts we're discussing?

17 A. Can I get you to zoom out, or can I?

18 (Pause)

19 A. Hard to read those numbers. Okay. Can you zoom
20 in a little bit up in this area? Okay.

21 There's two of the requests, number 36 and
22 number 37, are in section 25. Surface is owned by the
23 Voigts. Two requests are in section 36. Did I say 36
24 up there? Section 25. Okay. Two requests, number 34
25 and number 38, are in section 36. Part of number 34 is

1 owned by the Voigts and part of it's owned by the State.

2 Can you pan down to the next one?

3 And grade approval request 39 and 35 are both in
4 section 6, owned by the State of North Dakota.

5 Q. So two of the approval tracts that's on land
6 owned entirely by the State and one of them is partially
7 owned by the State?

8 A. Yes.

9 Q. Okay. Has the Department of Trust Lands ever
10 expressed any concern with the respread depths on the
11 lands that they own?

12 A. No.

13 Q. Is the Department of Trust Lands aware of this
14 hearing?

15 A. Yes.

16 Q. Okay. Let's move on to Exhibit number 103,
17 CCMC.

18 MR. MANN: Can we move to like the first page of
19 that initially? Yeah.

20 Q. Are you familiar with that, Donn? Can you
21 identify that for us?

22 A. Yes, I can.

23 Q. What is it?

24 A. It's regrade -- our grade approval request,
25 COY-037.

1 Q. Now, understanding there's six of these that are
2 at issue, but kind of, for illustrative purposes, let's
3 walk through one of them. So if -- can you walk us
4 through the COY-37 and explain how the process works
5 with respect to grade approvals?

6 A. Okay. Before I do, I got -- I'm going to
7 mention a couple regulations and a couple documents on
8 review so they're aware of this.

9 Q. Okay.

10 A. First off, North Dakota Administrative Code
11 69-5.2-21-06 requires that the mine submit a grade
12 approval request to the Public Service Commission before
13 we respread SPGM. That request, in accordance with that
14 paragraph, must include contour map of the regraded
15 surface and the thickness of topsoil, subsoil.

16 Second regulation I'd like to address is
17 69-5.2-15-04, subparagraph 4(a)(2), requires the SPGM
18 redistribution thickness to be based on the quality of
19 the graded spoil in accordance with the table in that
20 paragraph.

21 Another document I'd like to mention is Policy
22 number 17. Includes guidelines for us to follow in
23 preparation of our request.

24 And the fourth document is our Annual Soils
25 Handling Plan has the approved topsoil redistribution

1 thickness we use in this grade approval request.

2 Now, referring to this document, the first page
3 of our request includes a cover letter. Nothing real
4 worth addressing here.

5 If you go to the second page. Second -- okay.
6 Can you zoom in -- can you scan to the left a little
7 bit? Not there. Right over here. Zoom out a little
8 bit. There we go.

9 This is the boundary. By this magenta line
10 represent the boundary of this regrade, our grade
11 approval request COY-037. Approximately 10 acres. The
12 black lines represent the contours on 4-foot interval as
13 required by the regulation. The coloring is just some
14 of the various slopes that's put in this map.

15 And the other item here, these blue dots
16 represent the five locations we did our sampling. And
17 in accordance with the Policy 17, those samples are
18 taken into 12-inch depth, just like it says in Policy
19 17. And, typically, on a grid interval of approximately
20 400 feet, is what they like, putting them on that
21 interval you get one sample to about 3.7 acres.

22 And once we sample this -- once we get those
23 five samples, we send them off to Minnesota Valley
24 Testing Laboratory for the testing.

25 Can we move to page 3? We'll come back to this

1 later.

2 Okay. Stop there.

3 This table has nothing to do with the
4 redistribution thickness. Just about the contour maps
5 or the contour lines and more reference to that area
6 slopes.

7 You can pan it down, please.

8 The rest is just -- some general information in
9 a narrative. Bottom table is the final depths that are
10 calculated, redistribution depths that we calculate.
11 I'll go into those calculations in a minute. It's just
12 where it ends up reporting it at.

13 Go to the next page and we'll go through the
14 calculation.

15 Okay. Monty went through one of these in a lot
16 of detail too. I'll just do the same thing. I'll go
17 into it. It mentions how we use S -- SAR and texture to
18 make the determination. There was five samples here.
19 If you guys remember about the texture, every one of
20 these is going to be a fine texture. Yes, he went
21 through all that and what these abbreviations mean. So
22 really it's just going to...

23 Let's look at the SARs here. And we got four --
24 five samples. This SAR here is between -- it's under 12
25 so that would have 24-inch respread depth. Next one is

1 the 14.2. That's between 12 and 20. That would require
2 a 36-inch depth. This one here is a 9.3. Would require
3 a 24-inch depth. This one is a 9.9. It's under 12 but
4 also would require a 24-inch depth. And sample number 5
5 is an 18.3 which would require -- it's between 12 and 20
6 so it would also require a 36-inch depth.

7 If we go back to the map on page 2 now.

8 Okay. If you remember back from the table we
9 talked about, samples 1 and 3 had a total redistribution
10 depth of 24 inches. And if we pull out our Annual Soils
11 Handling Plan, all this land of Casey Voigt owns this
12 coming -- this year, in '23, would receive 12.2 inches
13 of topsoil.

14 So how we calculate the subsoil is the
15 difference between that 24 inches and the 12.2. So you
16 end up with 11 point inch of subsoil for this area.
17 That's going to get 24-inch total. This area here gets
18 a 36-inch total. Subtract off the 12.2. You end up
19 with the 23.8 in the subsoil.

20 Here we are around sample site number 4. It's a
21 24-inch total. End up with 11.8 inches of subsoil. And
22 area number -- the area around sample area number 5 is a
23 total redistribution depth of 36 so you'll end up with
24 23.8 inches of subsoil for that tract.

25 Monty did describe a little bit about how we

1 come up with these quadrants. We basically split the
2 difference. How do we know? 36 to 24. We ended up
3 splitting the difference between each sample location.
4 It kind of creates this grid we see here. So this
5 quadrant here gets 24 total. This quadrant gets 36.
6 This quadrant gets 24. This quadrant gets 36. And
7 acreages of each are calculated off that.

8 Can you go back -- or go to the next page 3
9 again? And pan down to the bottom, please.

10 And once that information we had there, there is
11 that 24-inch to respread, total to 5.0421 acres. Here
12 we had 36. Ended up having 4.9471 acres. And there,
13 again, repeats them depths that we came up with.

14 Basically, I guess that sums up the process that
15 we do in preparation of submittal of that request.

16 Q. Sure. Now, Donn, we talked through that one in
17 detail, but the other five, I guess, that were at issue
18 in the complaint, did the mine apply the same procedure
19 for each of those grade approval requests?

20 A. Yes, we did.

21 Q. Okay. And did that procedure, for each of the
22 other five, did that also comply with the requirements
23 set forth in, you know, 05.2-15-04?

24 A. Yes.

25 Q. Okay. And then is your procedure for

1 establishing SPGM respread thickness required to be
2 approved by the PSC?

3 A. Yes, it is.

4 Q. Okay. And the mine can't do any SPGM respread
5 without PSC approval; correct?

6 A. Correct.

7 Q. Okay. And were the respread thicknesses set
8 forth in each of the grade approval requests calculated
9 based on the actual graded spoil characteristics?

10 A. Yes.

11 Q. Okay. They were not based upon pre-mine
12 overburden characteristics; correct?

13 A. Correct.

14 Q. Okay. And as Mr. Johnson had indicated, those
15 -- that data is irrelevant to this determination;
16 correct?

17 A. Correct.

18 Q. Okay. And the mine submitted the grade approval
19 requests for each of the six tracts to the PSC; correct?

20 A. Yes.

21 Q. And the PSC has already approved each request?

22 A. Yes.

23 Q. Okay. So the PSC staff with the expertise in
24 this area has evaluated your procedure for establishing
25 the respread thickness on each tract and determined it

1 to be correct?

2 A. Yes.

3 Q. Have you reviewed the complaint in this case?

4 A. Yes.

5 Q. Okay.

6 MR. MANN: If we could pull up Exhibit number
7 105. And if we could go to the prayer for relief and
8 complaint.

9 Yep. A little bit more. There you go.

10 Q. All right. Now, Donn, the first request for
11 relief is for reversal of the grade approval requests
12 that have already been approved by the PSC. Does the
13 mine have any authority to reverse the actions of the
14 PSC?

15 A. No.

16 Q. Okay. So you're bound by currently what the PSC
17 has approved?

18 A. Correct.

19 Q. And then moving on, the third request, it looks
20 like they've requested that all respread depths on the
21 Voigt property be calculated pursuant to the regulation.
22 Do you see that?

23 A. You got to pan down to number C. Can we do
24 that?

25 Q. Yeah.

1 A. Yeah.

2 Q. I mean, one, you're already doing that; correct?

3 A. Yes.

4 Q. Okay. And, again, that's something that's going
5 to have to be -- require enforcement approval by the
6 PSC?

7 A. Yes. Correct.

8 Q. And the PSC's not a party to the complaint, are
9 they?

10 A. No.

11 Q. Okay. And if only the PSC can provide the
12 relief, do you know why the mine's a party of the
13 action, not the PSC or Reclamation?

14 MR. BRAATEN: Object to the extent it calls for
15 legal conclusions.

16 A. I do not, no.

17 Q. And, Donn, have you -- did you have your
18 deposition taken last week as a representative of the
19 mine?

20 A. Yes, I did.

21 Q. And approximately how long did that deposition
22 take?

23 A. Four hours.

24 Q. Okay.

25 MR. MANN: I have no further questions at this

1 time.

2 ALJ HOGAN: Did you want to offer your exhibits?

3 MR. MANN: Yes.

4 ALJ HOGAN: Let's see. I think 105 we already
5 -- 105 I think I already admitted.

6 MR. MANN: Yeah.

7 ALJ HOGAN: So 101 through --

8 MR. MANN: 100 through 103.

9 ALJ HOGAN: Three, yep.

10 MR. MANN: Yeah, 104 we don't need. That was --
11 it's already in through, I believe, Voigts' exhibit, I
12 think it's 38. I'm not sure. So we don't need that
13 one.

14 ALJ HOGAN: Any objection to Exhibits 100
15 through 103, Mr. Braaten?

16 MR. BRAATEN: No objections.

17 ALJ HOGAN: Mr. Schuh, any objection?

18 MR. SCHUH: No, Your Honor.

19 ALJ HOGAN: All right. Those exhibits are
20 admitted.

21 Mr. Braaten, did you have any questions?

22 MR. BRAATEN: Yes, I do, Your Honor.

23 ALJ HOGAN: Go ahead.

24 ///

25 ///

CROSS EXAMINATION

1
2 BY MR. BRAATEN:

3 Q. Mr. Steffen, are you reading from a document you
4 have up there when you're answering these questions?

5 A. No, not necessarily. I got some --

6 Q. You have a document there with questions and red
7 writing underneath it.

8 A. Yeah. That's my bullet points. Yeah.

9 Q. Okay. Are those --

10 A. I got some notes, yeah.

11 Q. Same questions that Mr. Mann's asking you
12 written on that document?

13 A. Yes.

14 Q. Were you at the meeting with Casey, Tyler, and
15 Jeremy when Casey took the picture of the pre-bench?

16 A. No, I was not.

17 Q. Can I have you look at Exhibit 100? It's the
18 first exhibit you had up there.

19 A. Got it.

20 Q. On the second line under the Projected, you have
21 the word "overburden" and under Actual you have the word
22 "spoil." And I might have just missed this, but can you
23 explain the difference between those two things?

24 A. All the projected redistribution thickness are
25 calculated on your overburden, quality overburden in

1 advance of mining. And all the actual redistribution
2 thicknesses are calculated on the spoil after mining.

3 Q. What is spoil?

4 A. Spoil, by definition regulations, is disturbed
5 overburden. Overburden that's disturbed by mining. I
6 think that's the PSC definition from the regulation.

7 Q. Okay. So the spoil is just the overburden after
8 it's been disturbed?

9 A. After it's been disturbed. Very distinct. I
10 just want to make sure everybody's aware of that because
11 that is in the regulation. It's the definition in the
12 regulation.

13 Q. And the regulation you're referring to being at
14 Exhibit 38; is that right?

15 A. The definition of it?

16 Q. Yeah. No. You said you -- sorry. You just
17 referred to a regulation.

18 A. Yeah. I said the regulation for the definition
19 of spoil. I guess it's --

20 Q. Oh, okay. Sorry.

21 A. It's in the regulation is all I said, I guess.

22 Q. Can I have you turn to Exhibit 38, please.

23 A. Okay.

24 Q. And underneath subsection 4 on page Voigt-4, do
25 you see the table?

1 A. Yes, I do.

2 Q. And it references spoil properties; right?

3 A. Correct.

4 Q. Meaning the properties of all the overburden
5 disturbed by mining?

6 A. By definition, that is spoil, yes.

7 MR. BRAATEN: No further questions.

8 ALJ HOGAN: Mr. Schuh, any questions?

9 MR. SCHUH: Just a couple, Your Honor.

10 CROSS EXAMINATION

11 BY MR. SCHUH:

12 Q. Mr. Steffen, I was wondering if you could walk
13 us through how the mine does sampling of the graded
14 spoil prior to respreading the SPGM?

15 A. Okay. I don't need a map but you -- we
16 basically lay out those samples to represent the area.
17 We lay it out on -- we look at a grid system just like
18 your policy says. Because some are odd shapes, we don't
19 always use a 400-foot grid. It's generally tighter than
20 that.

21 If you look at that exact sample I went through,
22 we took five samples on a 10-acre area. That equates to
23 one sample. Took two acres, almost double what's
24 required. So we took -- we generally take more samples
25 than required by the regulation.

1 But when we determine that sample location,
2 whoever goes out there, it's a grid, it's marked,
3 surveyed, and we'll go out and take random samples in
4 the vicinity of that sample, anywhere from three to
5 four, but I've taken as many as six to eight to
6 represent that area. And then they're combined to make
7 a composite sample that we send off.

8 The ending sample's not that big. The bags are
9 supplied by NDTL Laboratory. It's like a 1- or 2-pound
10 sample. But bags are supplied and all the data, when
11 you submit it to NDTL for testing, is supplied by them.

12 Q. Now, you said that you do sampling in, I guess
13 -- as Policy Memo 17 has provided. And Policy Memo 17
14 specifies that a sampling of 12 inches is what we would
15 like to see. Do you think that's adequate or do you
16 think that's appropriate?

17 A. Yeah. I -- description was given to me, I'll
18 say Jim Deutsch or Dean Moos, one of them two, probably
19 in a --

20 MR. BRAATEN: I'm going to object. Hearsay.

21 A. But back in the '90s --

22 ALJ HOGAN: Hang on, hang on. Objection to him
23 referencing --

24 MR. BRAATEN: What Dean Moos or Jim Deutsch told
25 him.

1 ALJ HOGAN: Yeah. You can't tell us what other
2 people have said so...

3 THE WITNESS: Okay.

4 A. The question is yes, I take -- now I'm back to,
5 yes, we take the samples to a depth of 12 inches then.

6 BY MR. SCHUH:

7 Q. Are you aware of how the 12 inches was set as a
8 representative sample method?

9 A. I do not. This policy was written before I
10 started with the company.

11 MR. SCHUH: That's all the questions I have.
12 Thank you, Your Honor.

13 ALJ HOGAN: All right. Commissioner Christmann?

14 CHAIRMAN CHRISTMANN: Would you go back to
15 number 103, please. And the chart with -- yep, that
16 one.

17 What determines the topsoil amount? Like why is
18 it 12.2 inches as opposed to a little more or a little
19 less?

20 THE WITNESS: That is determined -- one time a
21 year we submit our Annual Soils Handling Plan to the
22 Public Service Commission for approval. And that is
23 determined on amount of total available topsoil for that
24 calendar year across the acres.

25 But it's calculated to be even distribution

1 across all of Voigts' land at 12.2 inches based on his
2 inventory that he has. That's for native. He has a
3 different depth for cropland of 18.2. But it is
4 determined beginning of the year.

5 CHAIRMAN CHRISTMANN: And what about other land
6 than Voigts'?

7 THE WITNESS: State land. For all tracts of
8 land. It's a pretty detailed calculation submitted.

9 CHAIRMAN CHRISTMANN: But each have their own or
10 they're all 12.2 that are pasture?

11 THE WITNESS: No. Every ownership has a
12 different depth and as -- many land uses have different
13 depths also.

14 CHAIRMAN CHRISTMANN: Okay. And then those five
15 test spots in that -- in COY-37, I think you said they
16 were each about two acres. But when you go from 24
17 inches of respread to 36, what -- and in between it's
18 just slowly tapering from one to the other?

19 THE WITNESS: We slowly taper to make sure we
20 never short the thicker side. We taper it anywhere
21 from 50 to 75 feet typically. If it's real flat land,
22 we'll extend it further. But we do a taper, build it
23 right into our GPS units for the equipment to follow it.
24 So they get it right on that way.

25 CHAIRMAN CHRISTMANN: And so it's not even an

1 average. The 36 area, the entire thing is covered by
2 36. And the 24 area, it would slope down from 24 --

3 THE WITNESS: Yeah.

4 CHAIRMAN CHRISTMANN: -- from 36 down to 24?

5 THE WITNESS: Yes. The 24-inch area would get
6 more, yes, because of that taper and transition.

7 CHAIRMAN CHRISTMANN: Okay. And I started
8 getting confused and lost track of the purpose of the
9 projected redistribution. Is that just so that, in the
10 course of years and decades of mining, you don't get to
11 the end and not have enough material left or --

12 THE WITNESS: It's actually to make sure you
13 have a balance every year. The -- the projected
14 respread distribution thickness that we put a lot of
15 work into putting our permit, actually, we pull it out
16 and use it for about one hour a year. It's the only
17 time we look at it, when we put together our Annual
18 Soils Handling Plan. That's the only time we look at
19 it. It gets stuck in a drawer and forgot about for
20 another year.

21 It's calculated once just to use for that
22 purposes only. And it's to make sure that we have --
23 and the Annual Soils Handling Plan is to make sure we
24 have a balance of topsoil and subsoil at any given time
25 to cover all the disturbed lands.

1 CHAIRMAN CHRISTMANN: Okay. And there was
2 discussion that I didn't fully grasp on the property
3 owner's preference statements in the lease. And as I
4 understood it, Ms. Flath had asked that that be filled
5 out or provided?

6 THE WITNESS: It's a reclamation requirement
7 that we get a preference statement from all landowners
8 to their -- a preference statement is supposed to be
9 what they want their post-mine land use to be reclaimed
10 to, the land uses of that land compared to pre-mining.

11 CHAIRMAN CHRISTMANN: Okay. To the uses. But
12 like if someone says, "Well, I want four feet of
13 respread --"

14 THE WITNESS: That's not what the preference
15 statement is for. We still got to follow the
16 regulation.

17 CHAIRMAN CHRISTMANN: So you're saying that it's
18 our responsibility to make sure you follow the
19 regulation. If there's dispute about the lease, that
20 would be between you and your lessee, whether that's
21 something that's enforceable or not?

22 THE WITNESS: Correct, on the lease, yes. Same
23 with the preference statement. It's really about the
24 land use, how you want it reclaimed. Nobody gets
25 ridiculous. "I also want a million dollars cash every

1 year." You just can't make such a preference and expect
2 it to be -- to be followed.

3 CHAIRMAN CHRISTMANN: Okay. No other questions.
4 Thank you.

5 ALJ HOGAN: Commissioner Haugen-Hoffart.

6 COMMISSIONER HAUGEN-HOFFART: Thank you.

7 Donn, I want you to explain to me that -- what
8 the company does to educate someone who leases the land
9 on the rules and regulations that you follow. So tell
10 me how you communicate that to the landowners.

11 THE WITNESS: If they requested to understand
12 rules and regulations, we'd sure meet with them. Any
13 time they ask, we would meet with them. So nothing --

14 COMMISSIONER HAUGEN-HOFFART: But what do you do
15 prior? I mean, because you have rules and regs that you
16 have to follow, what do you do to inform them at the
17 beginning to say -- I mean, you fill out a lease and,
18 you know, the pre-lease. You just give it to them and
19 say, "Review and sign. If you have questions, let me
20 know"? Or what do you do to educate them and understand
21 -- because it seems like there's a lot of confusion on
22 this statute.

23 THE WITNESS: Yeah, (indiscernible) --

24 COMMISSIONER HAUGEN-HOFFART: So I just want to
25 know what you guys do as a company to inform them.

1 THE WITNESS: We don't have a set procedure. If
2 somebody said, "Hey, I'd really like to understand," we
3 would meet with them and comply and do whatever. If
4 somebody wanted to be explained, I would do that. But
5 we do not have a set timeframe requirement that we have
6 to meet with them and explain all the laws and
7 regulations. Again, they could even contact the Public
8 Service Commission and do the same thing at any time.

9 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
10 No further questions.

11 ALJ HOGAN: Commissioner Fedorchak.

12 COMMISSIONER FEDORCHAK: Okay. Thank you.

13 Thank you, Donn. Can you tell me, talk a little
14 bit about the -- let's go with the monitoring of the
15 productivity of the lands after you're kind of -- have
16 started putting crops back or leasing out to other
17 landowners. I have thoughts in my head about how that
18 is performed because I know we have some pretty, I
19 think, significant standards for that, but tell me what
20 you guys do.

21 THE WITNESS: We're just in the early stages --

22 COMMISSIONER FEDORCHAK: Not on these but
23 just --

24 THE WITNESS: Oh.

25 COMMISSIONER FEDORCHAK: -- in your other ones

1 in general.

2 THE WITNESS: Other ones? Generally, that could
3 start the second year after mining. If it's been
4 reclaimed back, they could start checking yields and
5 stuff like that immediately once it's put into crop.

6 As far as grasslands, we probably start sampling
7 that in the third or fourth year after it's been
8 re-vegetated, start sampling grassland and checking
9 productivity and seasonality and diversity, yeah, you're
10 looking for trends and things like that. I'd say
11 native, year three to four. Cropland, could be year
12 two.

13 COMMISSIONER FEDORCHAK: So you're out there
14 monitoring those, taking data. Is there any -- at what
15 point do you have to start reporting that to the PSC?

16 THE WITNESS: You don't have to report that
17 until actual bond release.

18 COMMISSIONER FEDORCHAK: Okay.

19 THE WITNESS: Time of bond release.

20 COMMISSIONER FEDORCHAK: But you have staff that
21 are -- that's their job, is to monitor the ultimate,
22 like, success of the reclamation and see -- and make
23 corrections along the way if things aren't going right?

24 THE WITNESS: Yeah, that's correct. And I'm
25 sure John Langen (phonetic) has taken part of that

1 because he has to provide that data to that person. I'm
2 sure John has did it many times. Every year he probably
3 has to sit down with that person and provide that data
4 to them.

5 COMMISSIONER FEDORCHAK: So you work with the
6 landowners too or the people who are leasing the land?

7 THE WITNESS: Typically, you work with a tenant
8 like John --

9 COMMISSIONER FEDORCHAK: Yep.

10 THE WITNESS: -- more than the landowner
11 themselves.

12 COMMISSIONER FEDORCHAK: Yeah. Whoever is
13 farming it.

14 THE WITNESS: Typically, yeah.

15 COMMISSIONER FEDORCHAK: So you get feedback
16 from them on their yields and -- or the productivity?

17 THE WITNESS: I would when I was in charge of
18 that, but I've not did that part of it for 12, 15 years.

19 COMMISSIONER FEDORCHAK: All right. The -- oh,
20 you already answered that. You don't know where the
21 12 inches came from; right? That was pre you, the
22 12-inch standard for the sampling --

23 THE WITNESS: Comes right out of Policy 17, word
24 for word.

25 COMMISSIONER FEDORCHAK: Yeah. Might need to

1 have somebody from our staff come back up. But let me
2 think about that for a minute.

3 Let's see. So when you guys are collecting the
4 topsoil and subsoil -- I'm getting out my chart so I can
5 get the right word for it. Where did it go? Oh, here
6 it is. SPGM. When you're collecting that and you guys
7 -- you guys store that and protect it pretty carefully,
8 I'm assuming?

9 THE WITNESS: Correct, in accordance with
10 regulations. Yeah, there's stabilization of that.

11 COMMISSIONER FEDORCHAK: And is the -- is it the
12 requirement of the mining rules that that -- as much as
13 you have gets returned, as much as you originally
14 collect gets returned, or is there -- is there a
15 situation where, based on the SAR of the pre-bench
16 spoil, that that -- if that's too high -- or the
17 12 inches that you guys have to sample, if that was too
18 high, do you have to somehow get additional SPGM to add
19 beyond what you've collected off the land originally?

20 THE WITNESS: Okay. To answer that question,
21 all the topsoil is salvaged.

22 COMMISSIONER FEDORCHAK: Yep.

23 THE WITNESS: A hundred percent of the topsoil
24 has to be salvaged. Subsoil, a quantity has to be
25 salvaged enough to satisfy the requirements to make sure

1 that all lands get redistribution in accordance with
2 projected thickness up until active mining. Okay.

3 COMMISSIONER FEDORCHAK: Okay.

4 THE WITNESS: If we're short material, we make
5 adjustments. We have to collect more either next year,
6 take more unsuitable -- more suitable strata material to
7 make that shortage up. But each year it's adjusted in
8 our Annual Soils Handling Plan.

9 COMMISSIONER FEDORCHAK: Okay.

10 THE WITNESS: So if we're short and they spot
11 it, they make a request. Hey, we got to take more other
12 suitable strata. If there's no more subsoil left
13 because -- and we are taking it now, we have to, because
14 most of this land does not have adequate subsoil.

15 I know Casey Voigt's land averages 32 inches.
16 That's all he has on all his land, average. There's
17 many tracts of land, he's got less than 20 inches total.
18 Many areas, hundreds of acres, less than 20 inches. So
19 we make that with other suitable strata.

20 And the Public Service Commission checks that
21 every year. And then we start salvaging that material,
22 stockpiling it, so we can comply with the requirement.

23 COMMISSIONER FEDORCHAK: Where does the other
24 suitable strata come from?

25 THE WITNESS: Underneath the subsoil there's

1 other suitable strata. It's been surveyed.

2 COMMISSIONER FEDORCHAK: And it's all tested?

3 THE WITNESS: Yes, it is all tested. We call it
4 our deep lift material. There's a whole report in our
5 permit. It's a testing of the area from 5 feet to
6 10 feet to find extra other material that would qualify
7 for subsoil. And the PSC gets -- grants us permission
8 to use that material --

9 COMMISSIONER FEDORCHAK: Okay.

10 THE WITNESS: -- where we're short. If we're
11 ever long material, say we have a situation we're long
12 and we don't, then we can -- we got the right to waive
13 subsoil or other suitable strata and take less that
14 particular year.

15 COMMISSIONER FEDORCHAK: Okay. So in coming --
16 like these standards for the entire -- you know, the
17 regrading of everything, those are a significant -- the
18 calculations and how that is all done and performed and
19 set in law, those calculations, are they a significant
20 part of your entire mine plan?

21 THE WITNESS: In the projected area?

22 COMMISSIONER FEDORCHAK: And even -- yeah,
23 projected.

24 THE WITNESS: And the projected is a significant
25 part. It's a -- we have to do a lot of sampling, a

1 tremendous amount of sampling to come up with that
2 projected respread distribution thickness. And the
3 actual, just them 12-inch, very little data, pretty
4 simple process. But during the projected stage, it's
5 extensive amount of work to get that number that we use
6 for one hour a year.

7 COMMISSIONER FEDORCHAK: So just changing that
8 -- changing those requirements, tell me how big of a
9 deal would that be for your company, for this mine and
10 for the -- just in general.

11 THE WITNESS: Changing the requirement to what?

12 COMMISSIONER FEDORCHAK: To what the Voigts
13 want.

14 THE WITNESS: That would require 40 inches --
15 that would be a significant cost of extra handling of
16 material. That's extensive. (Indiscernible) not
17 required by the regulations. No. There's cost to
18 handle extra material. Extreme amount extra material to
19 accomplish -- to accommodate -- it's not in the law. We
20 don't have to do that.

21 COMMISSIONER FEDORCHAK: Is that a -- if we were
22 to require that -- like I'm just -- I'm not seeing an
23 avenue for us to require that. Is that your guys'
24 position?

25 THE WITNESS: It's not economic for us. No.

1 It's very expensive to do such a request when it's not
2 needed.

3 COMMISSIONER FEDORCHAK: When it's -- when it's
4 -- what would be the process that, in your company's
5 estimation, the PSC would have to go through to make
6 that kind of a change in the code?

7 THE WITNESS: You'd, at this stage, have to find
8 new science proving different from the current science
9 that that table is based off of. That science was based
10 on pretty sound science in 1984, adopted by this PSC
11 in 1987. It's been used for 36 years by industry and
12 PSC successfully. Used by me personally for 33 years,
13 and I've never had a problem with it myself, current
14 regulation that's drafted.

15 COMMISSIONER FEDORCHAK: Okay. Have you been to
16 -- through bond release on any lands that you've been in
17 charge of?

18 THE WITNESS: Yes. I did thousands of acres
19 myself.

20 COMMISSIONER FEDORCHAK: And do you have any
21 thought that the current standards aren't ultimately
22 resulting in -- or are failing your -- hindering your
23 company's ability to meet the bond release requirements?

24 THE WITNESS: I can't speak for other companies
25 or other mines, but personally, I've never failed. I

1 received bond release on every tract of land that I was
2 involved with and I reclaimed personally, the ones I was
3 involved with.

4 COMMISSIONER FEDORCHAK: Okay. All right. I
5 don't think I have any more questions. Thank you.

6 ALJ HOGAN: Mr. Mann, any redirect?

7 MR. MANN: No, Your Honor. Thank you. That's
8 all I have for Mr. Steffen.

9 ALJ HOGAN: All right. Thank you.

10 CHAIRMAN CHRISTMANN: Can I?

11 ALJ HOGAN: Yes, go ahead.

12 CHAIRMAN CHRISTMANN: In all those bond
13 releases, I'm assuming there probably were some where it
14 took longer and some more work had to be done. Would
15 that be accurate?

16 THE WITNESS: Took longer, more work. Indian
17 Head Mine we shut down in 1992 and we finished
18 reclaiming that in 1994 and I had a hundred percent of
19 that released in 2005. Ten years. A hundred percent of
20 it was gone, released from bond in a ten-year time frame
21 in accordance with the regs. Is that what you're
22 getting at, is it took 20 years? No.

23 CHAIRMAN CHRISTMANN: I'm wondering if --

24 THE WITNESS: I got it done in 10.

25 CHAIRMAN CHRISTMANN: I'm wondering if there

1 were some tracts that, instead of 10 or 11 or 12 years,
2 that took 15 or 20. And, if so, if the problem had to
3 do with respread, that, you know, something had to go
4 back and be solved, or if problems associated with bond
5 release are usually for other reasons? And maybe you
6 haven't experienced any significant delays but --

7 THE WITNESS: I had some delays. Typically,
8 back then it -- regulations were quite a bit more
9 stringent because you had to prove production on years 9
10 and 10, and only years 9 and 10. So if you failed year
11 10, you had to start over again and get -- total years
12 11 and 12. So there was some reason it might have
13 failed in year 10 so, yeah, there was -- there was some
14 times I had to go an extra year or two to get that --
15 get the production requirements I needed.

16 CHAIRMAN CHRISTMANN: But it wasn't that it took
17 going back and putting more material down or things like
18 that?

19 THE WITNESS: I've never heard of anybody having
20 to go back and do that, no.

21 CHAIRMAN CHRISTMANN: Okay.

22 THE WITNESS: In any lands that I was involved
23 with, we never did, no.

24 CHAIRMAN CHRISTMANN: Okay.

25 ALJ HOGAN: Any other commissioner questions?

1 All right. Thank you, Mr. Steffen.

2 Mr. Mann, any other witnesses?

3 MR. MANN: No other witnesses. Thank you, Your
4 Honor.

5 ALJ HOGAN: All right. Mr. Schuh.

6 MR. SCHUH: Your Honor, I think the witnesses
7 have already presented testimony that we need today. I
8 know that commissioner --

9 COMMISSIONER FEDORCHAK: I wouldn't mind
10 visiting with Jack just for a minute.

11 ALJ HOGAN: Okay. Why don't we take a
12 ten-minute break.

13 COMMISSIONER FEDORCHAK: Sure.

14 ALJ HOGAN: And then we'll reconvene.

15 (Recess)

16 ALJ HOGAN: All right. We are back on the
17 record.

18 Mr. Schuh, any witnesses?

19 MR. SCHUH: Your Honor, we don't have -- we do
20 not have witnesses to call. However, I would offer
21 Mr. Welch and Jonathan Emmer if another party would like
22 to call them.

23 MR. MANN: The mine does not.

24 ALJ HOGAN: I'm seeing heads shake no so...

25 MR. BRAATEN: No, Your Honor.

1 ALJ HOGAN: You guys are off the hook.
2 All right. Any rebuttal testimony, Mr. Braaten?

3 MR. BRAATEN: No, Your Honor.

4 ALJ HOGAN: All right. That concludes the
5 testimony portion of our hearing today.

6 I assume parties are going to want to file
7 proposed findings. Are we doing written closing
8 arguments? Are you doing --

9 MR. BRAATEN: My preference would just be to do
10 them together and do a written closing along with
11 proposed findings and conclusions.

12 ALJ HOGAN: Mr. Mann, any objection?

13 MR. MANN: If that's fine with PSC, that's fine
14 with the mine. We're agreeable to that.

15 ALJ HOGAN: Okay. And deadline for submitting
16 those?

17 MR. BRAATEN: I should have been ready for that
18 one.

19 UNIDENTIFIED SPEAKER: Next year.

20 (Laughter)

21 ALJ HOGAN: That's not very generous.

22 UNIDENTIFIED SPEAKER: It was clever.

23 ALJ HOGAN: It was that.

24 MR. MANN: 19th?

25 MR. BRAATEN: Yeah, that works.

1 MR. MANN: December 19 -- or excuse me,
2 January 19th.

3 ALJ HOGAN: January 19th. Okay. Sounds like
4 that date is agreeable so that will be the deadline for
5 written and closing arguments and proposed findings of
6 fact, conclusions of law.

7 MR. SCHUH: Your Honor, if I may just request
8 one clarification --

9 ALJ HOGAN: Sure.

10 MR. SCHUH: -- that the record will remain open
11 for the written closings.

12 ALJ HOGAN: Yes.

13 MR. SCHUH: Okay. So the record will remain
14 open through that date.

15 ALJ HOGAN: Yep. For receipt of those -- the
16 closing arguments. Yep, I agree.

17 And then as far as the balance of the exhibits,
18 is there any need to admit any of the other exhibits
19 that were handed out this morning other than the ones
20 that we've admitted through testimony today?

21 MR. BRAATEN: Not from us, Your Honor.

22 ALJ HOGAN: Mr. Mann?

23 MR. MANN: One second. No, I don't believe so.

24 ALJ HOGAN: Mr. Schuh, I know there was some PSC
25 exhibits.

1 MR. SCHUH: No, Your Honor. I think they're
2 covered.

3 ALJ HOGAN: Okay. All right. So then I will be
4 filing with the PSC early next week a exhibit list so
5 the parties should have at least what I have as far as
6 admitted exhibits.

7 Any closing remarks from the commissioners
8 before we conclude?

9 CHAIRMAN CHRISTMANN: I do not.

10 COMMISSIONER HAUGEN-HOFFART: Just wish everyone
11 a merry Christmas and safe travels.

12 MR. BRAATEN: Thank you.

13 ALJ HOGAN: And any other matters for the record
14 from the parties before we conclude?

15 MR. BRAATEN: No, Your Honor.

16 MR. MANN: No, Your Honor.

17 ALJ HOGAN: All right. We'll note for the
18 record then it's 2:38 p.m. and that concludes our
19 hearing for today.

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CERTIFICATE OF TRANSCRIPTIONIST

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Dated this date of March 28, 2024.



LISA A. HULM, CET-783

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